

Supreme Court, U. S.  
**FILED**

NOV 29 1977

MICHAEL RODAK, JR., CLERK

**APPENDIX**

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**In the Supreme Court of the United States**

OCTOBER TERM, 1977

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**No. 76-1596**

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UNITED STATES OF AMERICA, PETITIONER

v.

JOHN MAURO AND JOHN FUSCO

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

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**PETITION FOR CERTIORARI FILED MAY 12, 1977  
CERTIORARI GRANTED OCTOBER 3, 1977**

# In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1596

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN MAURO AND JOHN FUSCO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

No. 75 CR 816

UNITED STATES OF AMERICA

v.

JOHN MAURO

*DOCKET ENTRIES*

Date	Proceedings
11-3-75	Before COSTANTINO J.—Indictment filed.
11-5-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
11-5-75	Writ Issued.
11-13-75	Before BARTELS, J.—Case called—deft present without counsel—case respectfully referred to Judge Costantino.
11-24-75	Before BARTELS, J.—case called—deft present without counsel—court interposes a plea of not guilty—status report set down for Dec. 2, 1975 at 9:30 a.m.
12-2-75	Before BARTELS, J.—case called—deft & atty S. Murphy present—trial set down for 3-17-76—certificate of engagement issued.
12-16-75	Writ retd and filed—executed.
3-2-76	Petition for writ of habeas corpus ad prosequendum filed—issued.
3-17-76	Before BARTELS, J.—case called—defts motion set down for 4-16-76—trial set down for 4-26-76 at 10:00 a.m.
3-19-76	Notice of motion to dismiss filed ret. 4-16-76.
4-14-76	Govts reply filed to defts motion to dismiss the indictment.
4-14-76	Govts notice of readiness for trial filed.
4-14-76	Petition for writ of habeas corpus ad prosequendum filed—issued.
4-23-76	Writ retd and filed—executed (Mauro).
4-26-76	Before BARTELS, J.—Case called—deft and counsel present—deft's motion to dismiss on ground of violation of interstate agreement on



Date	Proceedings
	retainers argued granted—indictment ordered dismissed—memorandum and order to follow.
5-5-76	Letter from A.U.S.A. Katz dated 5-5-76 filed.
5-6-76	3 transcripts filed one dated Nov. 24, 1975, one dated Nov. 13, 1975 and one dated Dec. 21, 1975.
5-6-76	Supplemental Brief filed in opposition to defts motion to dismiss indictment under Part IV(e) of the Interstate Agreement on Detainers.
5-17-76	By BARTELS, J.—Memorandum and Order filed dismissing indictment.
5-24-76	Notice of appeal filed by Govt.
5-24-76	Docket entries and duplicate of Notice mailed to the Court of appeals.
5-26-76	Stenographers transcript filed dated Mar. 17, 1976.
6-1-76	Record on appeal certified and mailed to court of appeals.
6-3-76	Order filed received from the court of appeals that the Record on appeal be docketed on or before 6-25-76.
6-7-76	Acknowledgment received from the Court of appeals filed for receipt of record on appeal.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

No. 75 CR 819

UNITED STATES OF AMERICA

v.

JOHN FUSCO

*DOCKET ENTRIES*

Date	Proceedings
11-3-75	Before COSTANTINO J.—Indictment filed.
11-5-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
11-5-75	Writ Issued.
11-13-75	Before BARTELS, J.—Case called—Pleading adjd to 11-17-75.
11-17-75	Before BARTELS, J.—Case called—deft and counsel present—case respectfully referred to Judge Judd for pleading.
11-18-75	By BARTELS, J.—Order appointing counsel filed.
11-24-75	Before BARTELS, J.—case called—deft & counsel John Corbett present—deft waives reading of the indictment and enters a plea of not guilty—status report set down for Dec. 2, 1975 at 9:30 a.m.
11-25-75	Writ retd and filed—Executed.
12-2-75	Before BARTELS, J.—Case called—deft and counsel present trial set down for 2-4-76 at 10:00 a.m.—certificate of engagement issued.
2-4-76	Subpoena to Testify etc. received from Chambers and placed in criminal folder.
3-2-76	Petition for writ of habeas corpus ad prosequendum filed—issued.
3-18-76	Before BARTELS, J.—case called—trial adjd to 4-29-76.
4-14-76	Govts Notice of readiness for trial filed.
4-27-76	Notice of Motion filed for dismissal (forwarded to Chambers).



Date	Proceedings
4-29-76	Before BARTELS, J.—case called—deft & atty present—defts motion to dismiss the indictment argued and granted—Memorandum and Order to follow.
5-5-76	Writ ret'd and filed—executed.
5-6-76	Three stenographers transcripts filed (placed in 75 CR-816) dated Nov. 13, Nov. 24 and Dec. 21, 1975 respectively.
5-6-76	Supplemental Brief in opposition to defts motion to dismiss indictment under Part IV(e) of the Interstate Agreement on Detainers.
5-10-76	Voucher for compensation of counsel filed.
5-13-76	Stenographers Transcript dated 4-29-76.
5-19-76	By BARTELS, J.—Order filed dismissing the indictment.
5-24-76	Govts Notice of appeal filed.
5-24-76	Docket entries and duplicate of Notice mailed to the Court of appeals.
5-26-76	Stenographers transcript filed dated Nov. 17, 1976.
6-1-76	Record on appeal certified and mailed to court of appeals.
6-4-76	Acknowledgment received from court of appeals for receipt of record.
6-7-76	Order filed that Index to Record on appeal be docketed on or before June 25, 1976.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

United States of America

v.

John Mauro,

Defendant

Indictment  
18 USC § 401

The Grand Jury Charges:

**COUNT ONE**

On or about the 12th day of May, 1975 in the Eastern District of New York, JOHN MAURO, being then a witness before the Grand Jury of the United States District Court for the Eastern District of New York, having received a lawful order of a Court of the United States, in open court to wit: to proceed to the Grand Jury room to answer under a grant of immunity, the questions to be asked of him in the conduct of the Grand Jury proceeding, did unlawfully, wilfully and knowingly disobey the lawful order of the United States District Court for the Eastern District of New York, in that he refused to answer the questions asked of him in the course of the Grand Jury proceedings.

(Title 18, United States Code, Section 401).

**A TRUE BILL**

**FORELADY**

David G. Trager  
United States Attorney  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

v.

John Fusco,

Defendant

Indictment  
18 USC § 401

The Grand Jury Charges:

*COUNT ONE*

On or about the 9th day of June, 1975, in the Eastern District of New York, JOHN FUSCO, being then a witness before the Grand Jury of the United States District Court for the Eastern District of New York, having received a lawful order of a Court of the United States, in open court to wit: to proceed to the Grand Jury room to answer under a grant of immunity, the questions to be asked of him in the conduct of the Grand Jury proceeding, did unlawfully, wilfully and knowingly disobey the lawful order of the United States District Court for the Eastern District of New York, in that he refused to answer the questions asked of him in the course of the Grand Jury proceedings.

(Title 18, United States Code, Section 401).

A TRUE BILL

FORELADY

David G. Trager  
United States Attorney  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

v.

John Mauro

Petition for a writ  
of habeas corpus  
ad prosequendum  
No. 75 CR 816

TO THE HONORABLE JUDGES OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK:

The petition of Marsha Katz Special Attorney for the Eastern District of New York, respectfully shows to this Court that John Mauro now being detained in Auburn Correctional Facility, Auburn, N.Y. is charged, by an indictment filed against him in the Eastern District of New York, with violation of Title 18 United States Code, Section 401.

It is necessary that the said defendant John Mauro be brought to the United States District Court for the Eastern District of New York for trial before said United States District Court for the Eastern District of New York on the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum issue in this behalf directing that the said John Mauro be produced at the time and place set forth in said Writ, in civilian clothes, and that, after the said John Mauro shall have appeared in pursuance of said Writ, and at the termination of the proceedings in the said United States District Court for the Eastern District of New York on that particular day, he be returned immediately to the custody of the Warden, Auburn Correctional Facility, Auburn, N.Y., under safe and secure conduct.

Dated: Brooklyn, NY  
November 5, 1975

Marsha Katz  
SPECIAL ATTORNEY



## EASTERN DISTRICT OF NEW YORK, SS:

MARSHA KATZ being duly sworn, says that he is the petitioner above named; that he had read the foregoing petition by him subscribed and knows the contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz  
SPECIAL ATTORNEY

Sworn to before me this 5th  
day of November, 1977  
Richard L. Shanley

Notary Public  
State of N.Y. 30-3610090  
Qualified Nassau  
Term Expires 3-30-77

THE PRESIDENT OF THE UNITED STATES OF  
AMERICA

TO THE WARDEN, AUBURN CORRECTIONAL  
FACILITY, AUBURN, NEW YORK AND/OR TO THE  
UNITED STATES MARSHAL FOR THE EASTERN  
DISTRICT OF NEW YORK, AND/OR TO ANY OF  
HIS DEPUTIES, AND/OR TO ANY UNITED  
STATES MARSHAL

## GREETINGS:

YOU ARE HEREBY COMMANDED to have the body of John Mauro now detained under your custody, as it is said, under safe and secure conduct, in civilian clothes, before the United States District Court for the Eastern District of New York, at the United States Courthouse, in such courtroom as shall be designated, in the Borough of Brooklyn, City, State and Eastern District of New York, on the 19th day of November at 10 o'clock in the forenoon of that day, for trial before said United States District Court for the Eastern District of New York upon an indictment filed in said Eastern District of New York against the said John Mauro charging him with violation of Title 18 United States Code, Section 401 and, at the termination of the proceedings in the said United States District Court on that particular day, that you return him forthwith to the Warden, Auburn Correctional Facility, Auburn, N.Y., under safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY  
November 5, 1975

Mark A. Costantino  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

Clerk USDC EDNY

By:

Deputy Clerk



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

v.

John Mauro

Petition for a writ  
of habeas corpus  
ad prosequendum  
No. 75 CR 816

TO THE HONORABLE JUDGES OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK:

The petition of Marsha Katz Special Attorney for the Eastern District of New York, respectfully shows to this Court that John Mauro #6689 now being detained in Auburn Correctional Facility, Auburn, N.Y., is charged, by an indictment filed against him in the Eastern District of New York, with violation of Title 18 United States Code, Section 401.

It is necessary that the said defendant John Mauro #6689 be brought to the United States District Court for the Eastern District of New York for trial before said United States District Court for the Eastern District of New York on the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum issue in this behalf directing that the said John Mauro, #6689, be produced at the time and place set forth in said Writ, in civilian clothes, and that, after the said John Mauro, #6689, shall have appeared in pursuance of said Writ, and at the termination of the proceedings in the said United States District Court for the Eastern District of New York on that particular day, he be returned immediately to the custody of the Warden, Auburn Correctional Facility, Auburn, N.Y., under safe and secure conduct.

Dated: Brooklyn, NY  
April 14, 1976

Marsha Katz  
SPECIAL ATTORNEY

EASTERN DISTRICT OF NEW YORK, SS:

Marsha Katz being duly sworn, says that he is the petitioner above named; that he had read the foregoing petition by him subscribed and knows the contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz  
SPECIAL ATTORNEY

Sworn to before me this 14th  
day of April, 1976

Notary Public, State of New York  
[Remainder illegible]

THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

TO THE WARDEN, AUBURN CORRECTIONAL  
FACILITY, AUBURN, NEW YORK AND/OR TO THE  
UNITED STATES MARSHAL FOR THE EASTERN  
DISTRICT OF NEW YORK, AND/OR TO ANY OF  
HIS DEPUTIES, AND/OR TO ANY UNITED  
STATES MARSHAL

GREETINGS:

YOU ARE HEREBY COMMANDED to have the body  
of JOHN MAURO, #6689, now detained under your cus-  
tody, as it is said, under safe and secure conduct, in civilian  
clothes, before the United States District Court for the  
Eastern District of New York, at the United States Court-  
house, in such courtroom as shall be designated, in the  
Borough of Brooklyn, City, State and Eastern District of  
New York, on the 23rd day of April, 1976 at 10 o'clock in  
the forenoon of that day, for trial before said United  
States District Court for the Eastern District of New York  
upon an indictment filed in said Eastern District of New  
York against the said John Mauro, #6689 charging him  
with violation of Title 18, United States Code, Section  
401 and, at the termination of the proceedings in the said  
United States District Court on that particular day, that  
you return him forthwith to the Warden, AUBURN COR-  
RECTIONAL FACILITY, AUBURN, NEW YORK under  
safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY  
April 14, 1976

UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

Clerk USDC EDNY

By: \_\_\_\_\_  
Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

v.

John Fusco

Petition for a writ  
of habeas corpus  
ad prosequendum  
No. 75 CR 819

TO THE HONORABLE JUDGES OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK:

The petition of MARSHA KATZ, Special Attorney for  
the Eastern District of New York, respectfully shows to  
this Court that John Fusco, now being detained in Clinton  
Correctional Facility, Dannemora, N.Y., is charged, by an  
indictment filed against him in the Eastern District of New  
York, with violation of Title 18, United States Code, Sec-  
tion 401.

It is necessary that the said defendant John Fusco, be  
brought to the United States District Court for the Eastern  
District of New York for trial before said United States  
District Court for the Eastern District of New York on  
the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of  
Habeas Corpus ad Prosequendum issue in this behalf di-  
recting that the said John Fusco, be produced at the time  
and place set forth in said Writ, in civilian clothes, and  
that, after the said John Fusco, shall have appeared in  
pursuance of said Writ, and at the termination of the pro-  
ceedings in the said United States District Court for the  
Eastern District of New York on that particular day, he be  
returned immediately to the custody of the Warden, Clinton  
Correctional Facility, Dannemora, N.Y., under safe and  
secure conduct.

Dated: Brooklyn, NY  
November 5, 1975

Marsha Katz  
SPECIAL ATTORNEY



## EASTERN DISTRICT OF NEW YORK, SS:

MARSHA KATZ, being duly sworn, says that he is the petitioner above named; that he had read the foregoing petition by him subscribed and knows the contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz  
SPECIAL ATTORNEY

Sworn to before me this 5th  
day of November, 1975  
Richard L. Shanley

Notary Public  
State of N.Y. 30-3610090  
Qualified Nassau  
Term Expires 3-30-77

THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

TO THE WARDEN, CLINTON CORRECTIONAL  
FACILITY, DANNEMORA, N.Y., AND/OR TO THE  
UNITED STATES MARSHAL FOR THE EASTERN  
DISTRICT OF NEW YORK, AND/OR TO ANY OF HIS  
DEPUTIES, AND/OR TO ANY UNITED STATES  
MARSHAL

## GREETINGS:

YOU ARE HEREBY COMMANDED to have the body of John Fusco, now detained under your custody, as it is said, under safe and secure conduct, in civilian clothes, before the United States District Court for the Eastern District of New York, at the United States Courthouse, in such courtroom as shall be designated, in the Borough of Brooklyn, City, State and Eastern District of New York, on the 19th day of November, 1975, at 10 o'clock in the forenoon of that day, for trial before said United States District Court for the Eastern District of New York upon an indictment filed in said Eastern District of New York against the said John Fusco, charging him with violation of Title 18, United States Code, Section 401 and, at the termination of the proceedings in the said United States District Court on that particular day, that you return him forthwith to the Warden, Clinton Correctional Facility, Dannemora, N.Y., under safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY  
November 5, 1975

Mark A. Costantino  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

Clerk USDC EDNY

By:                       
Deputy Clerk



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

v.

John Fusco

Petition for a writ  
of habeas corpus  
ad prosequendum  
No. 75 CR 819

TO THE HONORABLE JUDGES OF THE UNITED  
STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK:

The petition of Marsha Katz, Special Attorney for the Eastern District of New York, respectfully shows to this Court that John Fusco, now being detained in Clinton Correctional Facility, is charged, by an indictment filed against him in the Eastern District of New York, with violation of Title 18, United States Code, Section 401.

It is necessary that the said defendant John Fusco, be brought to the United States District Court for the Eastern District of New York for trial before said United States District Court for the Eastern District of New York on the charges now pending against him.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus ad Prosequendum issue in this behalf directing that the said John Fusco, be produced at the time and place set forth in said Writ, in civilian clothes, and that, after the said John Fusco, shall have appeared in pursuance of said Writ, and at the termination of the proceedings in the said United States District Court for the Eastern District of New York on that particular day, he be returned immediately to the custody of the Warden, Clinton Correctional Facility, under safe and secure conduct.

Dated: Brooklyn, NY  
March 1, 1976

Marsha Katz  
SPECIAL ATTORNEY

EASTERN DISTRICT OF NEW YORK, SS:

Marsha Katz, being duly sworn, says that he is the petitioner above named; that he had read the foregoing petition by him subscribed and knows the contents thereof; that the same are true of his own knowledge and belief.

Marsha Katz  
SPECIAL ATTORNEY

Sworn to before me this 1st  
day of March, 1976  
Dianne [remainder illegible]

Notary Public, State of N.Y. 41-4617917  
Qualified in Queens County, Expires 3-30-77

THE PRESIDENT OF THE  
UNITED STATES OF AMERICA

TO THE WARDEN, CLINTON CORRECTIONAL  
FACILITY, AND/OR TO THE UNITED STATES  
MARSHAL FOR THE EASTERN DISTRICT OF  
NEW YORK, AND/OR TO ANY OF HIS DEPUTIES,  
AND/OR TO ANY UNITED STATES MARSHAL

GREETINGS:

YOU ARE HEREBY COMMANDED to have the body  
of John Fusco, now detained under your custody, as it is  
said, under safe and secure conduct, in civilian clothes,  
before the United States District Court for the Eastern  
District of New York, at the United States Courthouse, in  
such courtroom as shall be designated, in the Borough of  
Brooklyn, City, State and Eastern District of New York,  
on the 18th day of March, at 10 o'clock in the forenoon of  
that day, for trial before said United States District Court  
for the Eastern District of New York upon an indictment  
filed in said Eastern District of New York against the said  
John Fusco, charging him with violation of Title 18 United  
States Code, Section 401 and, at the termination of the  
proceedings in the said United States District Court on that  
particular day, that you return him forthwith to the  
Warden, CLINTON CORRECTIONAL FACILITY, under  
safe and secure conduct.

LET THE ABOVE WRIT ISSUE.

Dated: Brooklyn, NY  
March 1, 1976

UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

Clerk      USDC      EDNY

By: \_\_\_\_\_  
Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

—against—

John Mauro,

Defendant.

Notice of motion  
75 Cr. 816

SIRS:

PLEASE TAKE NOTICE that upon the annexed affir-  
mation of STEPHEN G. MURPHY, the memorandum in  
support thereof, the indictment, and all the prior proceed-  
ings herein, the defendant JOHN MAURO will move this  
court before the Hon. Judge Bartels on March 17, 1976 at  
10:00 A.M. or as soon thereafter as counsel can be heard  
in the United States Courthouse, 225 Cadman Plaza, Brook-  
lyn, New York, for an order dismissing the indictment  
pursuant to the Interstate Agreement on Detainers Article  
IV(e) Pub.L. 91-538 §§ 1-8, December 9, 1970, 84 Stat. 1397-  
1403, and for such other and further relief as to this court  
seems just and proper.

Dated: Kew Gardens, New York  
March 12, 1976

Yours, etc.

STEPHEN G. MURPHY  
MURPHY, SADOWSKI & KOEHLER, ESQS.  
Attorneys for Defendant  
125-10 Queens Blvd.,  
Kew Gardens, New York 11415  
(212) 793-0200



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

United States of America

—against—

John Mauro,

Defendant.

Affidavit in sup-  
port of motion

STATE OF NEW YORK } ss:  
COUNTY OF QUEENS }

STEPHEN G. MURPHY, being duly sworn, deposes and says:

1. I am an attorney at law, admitted to practice in this Court and a member of the law firm of Murphy, Sadowski & Koehler, Esqs., attorney for defendant JOHN MAURO.

2. The defendant was sentenced on December 12, 1974 in Supreme Court, Queens County, Criminal Term by the Honorable Rose L. Rubin, Justice of the Supreme Court, to a term of imprisonment of from three years to life.

3. As a prisoner of the New York State Department of Corrections, the defendant is serving his sentence at the correctional facility located at Auburne, New York. Except for the times that he has been produced in the Eastern District of New York, as will be hereinafter described, the defendant has continued to be a prisoner at Auburne.

4. Pursuant to a Writ of Habeas Corpus Ad Testificandum, the defendant was delivered into federal custody on May 7th, 1975 and subpoenaed to testify before a federal grand jury sitting in the Eastern District of New York.

5. An immunity order was signed May 12, 1975 by the Honorable Mark A. Constantino. The defendant was held in Civil Contempt by order of Judge Constantino on May 16, 1975 because of a purported refusal to obey his directive to testify before the grand jury, and sentenced to a term of six months, or the length of the grand jury, whichever was longer. The sentence was conditional and allowed the defendant to purge himself of the contempt. At no time on May 16, 1975 did Judge Constantino apprise the defendant of the fact that criminal contempt proceedings were contemplated to be brought against him. A copy of the minutes is annexed hereto as defendants Exhibit I.

6. After being sentenced, as described above, the defendant was detained at the federal detention facilities then located on West Street in Manhattan until he was returned into the custody of the New York State Department of Correction at Auburne, New York on July 30, 1975. At the time that he was received at the Auburne Correctional Facility the defendant was accompanied by a federal detainer dated July 9, 1975 charging contempt of court by an order of Judge Constantino on May 16, 1975.

7. The defendant remained at the Auburne Correctional Facility until November of 1975, at which time he was again produced in the Eastern District of New York, pursuant to a writ. The present indictment had been lodged against the defendant on November 5, 1975 charging Contempt of Court, in violation of T.18 USC Section 401. His production in the Eastern District of New York was for the purpose of prosecution under this indictment and in the month of December the defendant appeared with counsel before Judge Bartels and the matter was set down for trial on March 17, 1975. The defendant, however, was returned to the Auburne Correctional facility on December 11, 1975. During all this time the detainer dated July 9, 1975 continued to be lodged against the defendant. A copy of a letter from Mr. Robert J. Henderson, Superintendent at Auburne Correctional Facility dated December 15, 1975 is annexed hereto as defendant's Exhibit II, and indicates that the detainer was still lodged against the defendant on December 15, 1975.

8. On the above facts the defendant moves to dismiss the indictment against him on two grounds: first ground is that the defendant, pursuant to the Interstate Agreement on Detainers, was produced on November 12, 1975 in the Eastern District of New York for prosecution under the present indictment and that the defendant was transferred back to his place of imprisonment on December 11, 1975 without trial. This action is in direct contravention of the Interstate Agreement on Detainers Article IV(e) Pub. L. 91-538 §§ 1-8, December 9, 1970, 84 Stat. 1397-1403, which provides:

"if trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, in-



forming or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

9. Although rarely discussed, it seems as if there is no exception to the requirement that a defendant be tried before he is returned to the "sending jurisdiction." *U.S. ex. rel. Escola v. Groomes* 520 F2d 830 (3rd circ. 1975). Moreover, the foregoing seems to be the case even when the defendant is produced by means of Writ of Habeas Corpus Ad Prosequendum. *U.S. Ex. Rel. Esola, Supra*. In that case the relator alleged that on more than one occasion he had been produced from the custody of federal authorities into the custody of the State of New Jersey to stand trial, by means of a Writ. After having been produced on more than one occasion he was returned to the federal authorities. The court held that 1) the Interstate Agreement on Detainers is the exclusive means of transfer of prisoners to other jurisdictions for the purpose of trial, 2) That an indictment would be subject to dismissal with prejudice under Article IV(e) if trial is not held prior to a relator's return to the "sending jurisdiction."

10. The court's reason is persuasive. The purpose of Article IV(e) of the Interstate Agreement on Detainers is to minimize the adverse impact of a foreign prosecution on rehabilitative programs of the confining jurisdiction:

"On a more practical level, an outstanding detainer may make a defendant ineligible for probation or parole or for some of the more desirable work assignments in prison. Also, if a defendant is uncertain as to whether he will have to serve another jail term he is less likely to have the motivation to become successfully rehabilitated. This latter consideration is especially important in view of the fact that the basic purpose of the entire penal system is to prepare its inmates to reenter society as law-abiding citizens" See also 116 Cong. Rec. at 13999."

*U.S. ex. rel. Esola v. Groomes* at 837 n. 21 (citing 116 Cong. Rec. 14,000 May 4, 1970).

11. At the present case the wisdom of this proposition has borne true. Because of the fact of the detainer lodged

against the defendant, the defendant has been denied access, while incarcerated at Auburn, to privileges to which he would otherwise be entitled.

12. The defendant, therefore, moves to dismiss the indictment on the ground that he has been returned to the "sending jurisdiction" without having been tried on the present indictment. The defendant respectfully urges upon the court that a denial of this motion to dismiss would mean that the Interstate Agreement on Detainer "has wax teeth and is little more than a legislative exercise in futility". *People v. Esposito* 37 misc. 2d 386, 201 NYS 2d 83 at 88 (1960).

13. As second grounds for the defendant's motion, the defendant points to the fact that at the time that he was held in Civil Contempt by Judge Constantino on May 16, 1975, the court advised the defendant that a refusal of a directive to testify before the grand jury could, and would, result in a finding of Civil Contempt. At no time was it mentioned to the defendant that the court contemplated Criminal Contempt sanctions, or it possible that they might be applicable. That such sanctions were contemplated is indicated by the fact that when the defendant was returned to Auburn on July 9, 1975 he was accompanied by a federal detainer charging: Contempt of Court-Order J. Constantino 5/16/75. This is the detainer which is still lodged against the defendant and which is being apparently utilized for his production in the Eastern District of New York for trial under the present indictment.

14. The defendant contends that he was entitled to know on May 16, 1975 that any purported refusal to testify could not only be the subject of Civil sanctions, but also be accompanied by Criminal sanctions. *Yates v. U.S.* 227 F2 848 (9th circ. 1955). In that case the court held that:

"the peculiar nature of proceedings for contempt permits temporary coercive measures followed by imprisonment for a fixed term as punishment. But, while the coercion is applied, the defendant in the criminal case is entitled to know that he may yet be subjected to a definite penalty for contempt and that the coercive restraint is not intended to relieve him of the punishment for the criminal refusals which he has already uttered". *Yates v. U.S. supra* at 850.

It might be argued that the present case differs from that of *Yates, supra* in that in *Yates* there was involved a defendant who refused to testify as to certain matters after having taken the stand in her own defense. The defendant contends that in the present indictment he was no less a defendant when the court advised him of its intention to hold him in Civil Contempt. The notions inherent in due process of law should not permit a court to advise a defendant that he may be held in Civil Contempt and then to hold the defendant in criminal Contempt without warning after he has been held in Civil Contempt.

WHEREFORE, the defendant prays for an order dismissing the indictment pursuant to the Interstate Agreement on Detainers Article IV(e) and because at the time he was held in Civil Contempt he was not informed that Criminal sanctions could and would be imposed upon him.

Dated: Kew Gardens, New York  
March 12, 1976

STEPHEN G. MURPHY

Sworn to before me this  
day of March, 1976.

[Exhibit I]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

—against—

JOHN MAURO,

DEFENDANT.

United States Court-  
house  
Brooklyn, New York  
May 16, 1975  
10:00 o'clock a.m.

Before:

HONORABLE MARK A. CONSTANTINO, U.S.D.J.

ILENE GINSBERG  
OFFICIAL COURT REPORTER

[2] Appearances:

DAVID G. TRAGER, ESQ.,  
United States Attorney  
for the Eastern District of New York

BY: MARSHA KATZ, ESQ.,  
Assistant U. S. Attorney

STEVEN MURPHY, ESQ.,  
Attorney for Defendant.

[3] MR. MURPHY: Good morning, your Honor.

MS. KATZ: Good morning, your Honor.

Your Honor, I apologize to the Court. I did not check this morning to make sure Mr. Mauro was present.

THE COURT: We'll call down and see if he is there.

(Recess taken.)

(After recess.)

THE COURT: All those with no business before the Court will please leave.

(Whereupon all spectators exited the courtroom.)

MS. KATZ: Your Honor, Mr. Mauro appeared before you this Monday, May 12th at which time you signed an order requiring that he testify before the Grand Jury.

At that time Mr. Mauro was taken up to the Grand Jury



at which time he refused to answer any questions addressed to him.

We then again appeared before you with the Grand Jury Reporter and the Foreman of the Grand Jury. At that time you ordered Mr. Mauro to answer the questions asked by the Government.

We then returned to the Grand Jury at which time Mr. Mauro again refused to answer any questions [4] addressed to him.

We then returned to this courtroom and you set today as a hearing date on an order for holding Mr. Mauro in civil contempt.

THE COURT: Yes.

MR. MURPHY: Well, your Honor, Mr. Mauro informed me that under the circumstances he did not feel that answering any questions in the Grand Jury would be of any benefit to him; that he had previously made certain statements to Ms. Katz in the presence of Government witnesses and that he felt that his answers would be unsatisfactory to them and might make him liable for a perjury charge.

He therefore chose not to answer the questions at that time.

THE COURT: He still refuses at this time?

MR. MURPHY: He informs me he will make up his mind when he gets into the Grand Jury. He has not yet made up his mind at this time. He probably will not answer but he would make up his mind when he gets there and would like some time to think it over.

MS. KATZ: Our Grand Jury—it's my understanding that our Grand Jury is not sitting today but the United States Attorney's Grand Jury is sitting and if it is his desire we can place him before that [5] Grand Jury.

THE COURT: Does he want at this moment, the opportunity to go before the Grand Jury and give testimony?

MR. MURPHY: He will go before the Grand Jury but he does not desire to go before it.

MS. KATZ: I am offering Mr. Mauro the opportunity to testify before the Grand Jury.

MR. MURPHY: Judge, he doesn't want to testify before the Grand Jury.

THE COURT: Today or any other day?

MR. MURPHY: At this time.

MS. KATZ: At any time Mr. Mauro will change his mind

the Government is ready and prepared to put him before a Grand Jury. But, we request, until that time, that he be held in contempt.

THE COURT: You do not desire to go before the Grand Jury?

MR. MAURO: No.

MS. KATZ: You understand there is a Grand Jury that is sitting today and you can go before them.

MR. MAURO: I do not wish to.

THE COURT: If brought before that Grand Jury sitting today and being given an opportunity to answer questions propounded by the Government, would you answer [6] those questions?

MR. MAURO: No, your Honor.

THE COURT: You understand that by taking the position you are taking that you can now be held in civil contempt?

MR. MAURO: Yes.

THE COURT: Do you wish to reflect for one more moment as to the problems that civil contempt will impose upon you?

MR. MAURO: No.

THE COURT: You still wish at this time then to state to the Court that you will not go before the Grand Jury?

MR. MAURO: Yes, your Honor.

THE COURT: Now, do you know any legal reason why he should not be held in civil contempt at this time after the Court has interrogated him?

MR. MURPHY: No.

THE COURT: The Court will hold Mr. Mauro in civil contempt for six months or the length of the Grand Jury, whichever is longer, with the proviso in the event he changes his mind he can advise the Department of Justice attorney and he can be brought before the Grand Jury.

MR. MURPHY: Is your Honor directing that he [7] be lodged in a federal facility? He is in state custody.

THE COURT: No. There will be a federal detention and the time will not be stayed.

MR. MURPHY: I question the validity of what your Honor is doing. The law is that a state sentence can be tolled in only one of two ways and this is not one of the two ways.

THE COURT: You have to take that up with the state authorities.

MR. MURPHY: Oh, yes. I will.



[Exhibit II]

December 15, 1975

U. S. Marshal  
Mr. Frank M. Dulan  
Post Office Box 418  
Utica, New York 13503

RE: John MAURO AU #66689

Dear Sir:

The above-named inmate is presently incarcerated at Auburn Correctional Facility.

When he was received at this facility, he was accompanied by a Federal Detainer, dated 7/9/75, charging: Contempt of Court—Order J. Costantino (5/16/75).

The inmate is interested in having this Detainer disposed of.

Would you kindly check your records to see if this Detainer is still active, or whether the matter will be taken care of in the near future.

Thank you for your cooperation in this matter.

Very truly yours,  
ROBERT J. HENDERSON  
Superintendent  
/s/ Elaine Graves (kms)  
ELAINE GRAVES  
Head Clerk

kms

cc: J. Mauro, AU # 66689

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—against—

JOHN FUSCO,

DEFENDANT.

75-CR-819

United States Courthouse  
Brooklyn, New York  
November 17, 1975  
9:30 o'clock A.M.

Before:

HONORABLE JOHN R. BARTELS, U.S.D.J.

BURTON SULZER  
OFFICIAL COURT REPORTER

[2] Appearances:

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York  
BY: ALAN SHLEPPIN, ESQ.

—and—

MARSHA KATZ, ESQ.  
Assistant U.S. Attorneys

John FUSCO  
Pro Se

Also present:

EDWARD C. MONTELL

. . .

[3] THE COURT: . . . Was he before the State Court?  
MR. MONTELL: Yes.  
THE COURT: In a criminal matter?

MR. MONTELL: In a criminal matter, sir, yes, he's presently incarcerated, sir, and the matter before your Honor emanated from a Grand Jury proceeding.

. . .

[4] THE DEFENDANT: I don't understand, because last time I was in front of a judge—

THE COURT: What judge?

THE DEFENDANT Judge Judd, and I was told I was in civil contempt . . .

THE COURT: You are still under civil contempt. . . .

. . .

[8] MS. KATZ: The Grand Jury under which he was brought before is still sitting, your Honor, and will sit until May of this year.

. . .

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

—against—

JOHN MAURO  
ROBERT SMITH  
ROBERT MARINO  
JOHN FUSCO

DEFENDANTS

75 CR 816  
75 CR 817  
75 CR 818  
75 CR 819

United States Courthouse  
Brooklyn, New York

November 24, 1975  
9:30 a.m.

Before:

HONORABLE JOHN R. BARTELS, U.S.D.J.

SHELDON SILVERMAN  
Court Reporter

[2] Appearances:

DAVID G. TRAGER, Esq.  
United States Attorney  
for the Eastern District of New York

By: MARSHA KATZ, Esq.  
Special Attorney

RICHARD ROSENKRANZ, Esq.  
Attorney for Defendant Smith

. . .

[9] THE COURT: . . . Mr. Fusco, you've met Mr. Corbett, your lawyer?

[10] DEFENDANT FUSCO: Yes, your Honor.

THE COURT: What's your plea?

MR. CORBETT: Not guilty, sir.

. . .



[11] MR. CORBETT: Just one thing, Judge. The defendant reminded me. We had a conference on Friday. He told me that the authorities at the M.C.C. are keeping him and his co-defendants on this matter on separate floors. They're not allowing them to meet.

THE COURT: Is there any objection to that?

MR. CORBETT: Well, his objection is that he wishes to discuss his case with his co-defendants with a view to preparing for trial.

THE COURT: I don't believe there's any right at all that I know of that a prisoner can demand to speak to other prisoners. I don't know of any such right.

MS. KATZ: In light that this is a criminal contempt stemmed out of grand jury proceedings by its very nature are secretive, I don't think it would be appropriate.

THE COURT: I can't give you relief on that.

MR. CORBETT: I'll write to the warden of the M.C.C.

THE COURT: You're not getting my court order.

MR. CORBETT: I realize that.

. . .

[15] DEFENDANT FUSCO: Yes, your Honor, but now I went in front of Judge Judd and I was given six months on a civil contempt. Now I went back to Clinton—Danamora.

THE COURT: You didn't serve the six months because you're serving the State.

[16] DEFENDANT FUSCO: I don't know what you mean by not serving it. Because of the six months I was denied all privileges up in Clinton.

THE COURT: He ordered you again to serve.

DEFENDANT FUSCO: No.

MS. KATZ: I don't know why he's saying he was ordered to serve six months. The order for Mr. Fusco states that he's to be released in custody until, for the life of the Special May 1974 Special Grand Jury, which is still presenting, sitting, or until such time as he purges himself of this contempt. I don't know where this six months comes in. . . .

. . .

[18] DEFENDANT FUSCO: I'm still totally confused whether or not I was sentenced.

THE COURT: Even if you were, that was on the civil case. This is a criminal matter. You're not prevented from being prosecuted criminally. Mr. Corbett will tell you.

. . .

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

JOHN FUSCO  
ROBERT MARINO  
ROBERT SMITH  
JOHN MAURO

Defendants

75 CR 819  
75 CR 818  
75 CR 817  
75 CR 816

United States Courthouse  
Brooklyn, New York

December 2, 1975  
9:30 a.m.

Before:

HONORABLE JOHN R. BARTELS,  
U. S. D. J.

SHELDON SILVERMAN  
Court Reporter

[2] Appearances:

DAVID G. TRAGER, Esq.  
United States Attorney for the  
Eastern District of New York

By: MARSHA KATZ, Esq.  
Assistant U.S. Attorney

JOHN CORBETT, Esq.  
Attorney for Defendant Fusco

IRA COOPER, Esq.  
Attorney for Defendant Marino

RICHARD ROSENKRANZ, Esq.  
Attorney for Defendant Smith

STEPHEN MURPHY, Esq.  
Attorney for Defendant Mauro

[3] THE CLERK: Criminal cause status report, United States versus John Mauro, Robert Smith, Robert Marino, and John Fusco.

THE COURT: Good morning, gentlemen.

You understand the nature of these indictments? The question is, I suppose, whether they should all be tried at the same time or separately.

MS. KATZ: I've done research of the question that you had raised the last time as to the joinder of offenses. Under U.S. v. Gentile, 60 F.Res. 686, District Court case from this district, a case out of our office—

THE COURT: Federal Reserve decision? I never heard of that.

MS. KATZ: I'm sorry. Federal Rules decision, District Court case out of this district, 686. It tends to suggest under that decision that it would be improper on this case, although it would seem that the acts of the defendants arose out of the same series of transactions they were really independent. They were each called to the same grand jury, each asked the same series of questions, yet the contempt itself was individual of each other.

THE COURT: That doesn't offer too much of a problem. We'll try them one after each other. [4] I would think it would be up to the defendants. You would probably want all separate trials, do you?

MR. MURPHY: That's correct.

THE COURT: Four trials. We'll give it to you. Who wants to go first? Don't all raise your hands.

MR. MURPHY: I'm starting a trial next week in front of Judge Neaher.

THE COURT: How are you fixed for the trials of these cases?

MS. KATZ: I have three trials set for January. It would have to be either fairly soon or in February.

THE COURT: I don't have any trials, you know.

MS. KATZ: I'll give you some of mine, your Honor.

THE COURT: My books are clean, just waiting for these cases.

Do you want it in February?

MR. COOPER: Yes.

MR. ROSENKRANZ: Yes.



MR. MURPHY: It's not good for me. I'm on trial before Judge Mishler.

THE COURT: Something has to be good for you. You'll try the first one in December. You can't do [5] that? I'm giving you your pickings now. You can't go too far with this.

MR. MURPHY: January would be good for me. I'm starting a trial before Judge Neaher next Monday.

THE COURT: You're starting a trial here one of these days. You'd better put that down.

I'll give you a certificate. You can't start all those trials.

MS. KATZ: If you can give us an approximation of how long your trial before Judge Neaher will last?

MR. MURPHY: A week to ten days.

MS. KATZ: I begin a trial on the 5th of January before Judge Platt. Would it be possible to try it before that and the remaining three in February?

THE COURT: I would like to take these one, two, three, four. I would like to go right straight through, but that's not necessary. We can't— Can we do much before February? I'm going to be away a week in February. Let there be no doubt about that. We only have one day open in February!

Do you have anything in January?

We can fit one or two the week of February 2nd. I have the form for February.

MS. KATZ: All four cases?

[6] Your Honor, who do you want to go on the 4th of February?

THE COURT: Mr. Corbett is ready.

MR. CORBETT: Yes, I'll go, with Mr. Fusco.

THE COURT: How about the 9th of February? How about you, Mr. Rosenkranz— No, we'll take Mr. Cooper.

MR. COOPER: Yes, Judge?

THE COURT: The 9th.

MR. COOPER: February 9th.

THE COURT: It has to be finished soon.

MS. KATZ: You represent Mr. Marino?

MR. COOPER: That's correct.

THE COURT: These are not going to last more than one day!

MS. KATZ: I don't expect the presentation of the Govern-

ment's case, certainly no more than a day and a half, your Honor.

THE COURT: Now we've got two of them. Now we have to go to March for the other ones, gentlemen.

Wednesday, March 3rd?

MR. MURPHY: The only problem I have there—

THE COURT: You've got a lot of problems.

MR. MURPHY: I'm starting a trial in front [7] of Mishler on the 23rd of February. Probably I'll be finished by then, but I prefer—

THE COURT: How many defendants?

MR. MURPHY: Four defendants, Judge.

THE COURT: Do you think it will last longer than a week?

MR. MURPHY: It could.

THE COURT: Who's ready for March 3rd?

MR. ROSENKRANZ: March 3rd is fine, your Honor.

THE COURT: We need one more. This one you are going to get. March 17th, Mr. Murphy? You won't march in the parade that day, Mr. Murphy.

MR. MURPHY: Very well, Judge.

THE COURT: We'll give you all certificates.

Gentlemen, I'll mail them to you.

MR. ROSENKRANZ: Can we defer talking to the defendants here? Last time they wanted to return.

THE COURT: We have to be fair to the warden. You can't stay from December to March 17th. Miss Katz, they have a lot of problems over there. It's overcrowded.

MS. KATZ: The Government is willing to do whatever you direct us to do. We'll either send them back or writ them down.

THE COURT: Writ them down. You can leave [8] them here a week and writ them down.

MS. KATZ: When would you like them to return, three or four days before the trial?

THE COURT: Three or four days before the trial, yes. We can't keep them here.

. . .

[10] MR. COOPER: Rather than get these people back from the institution, of course with their consent, I speak on behalf of Robert Marino, would it be possible to have him remain at the institution at least until the beginning of January?

THE COURT: I have no objection except that Warden Jensen has need for all that space in there for detainees before trial. It's just unfair. These men are going to be there for a long time. They're already in jail; is that true?

MR. COOPER: That's correct.

THE COURT: I'm not going to do it. The answer [11] is I give you a week before they come to trial.

MR. CORBETT: Mr. Fusco has expressed a desire to go back to Danamora at this time, if your Honor can satisfy his writ.

MS. KATZ: We will have him writted down February 1st for the February 4th trial, unless you want a different date.

MR. CORBETT: I'll be in touch with you in January.

MS. KATZ: Other than Mr. Fusco, we will keep Mr. Marino, Mr. Smith and Mr. Mauro here one week from today, I believe, and then we will bring them back—

THE COURT: Unless they want to come down sooner.

MS. KATZ: Very well.

You wanted to determine whether they can stay, whether it's permissible for them to stay here?

MR. MURPHY: If the warden has no objection, can they stay?

THE COURT: Call him up and tell the warden if he has any objection, they'll go. If he's not crowded, I have no objection, of course, if it's not too crowded for them to stay. If it's crowded, he has no room, they go. That's simple. You can pick [12] up a phone. I can do it myself, but there's no problem here. That's done all the time.

MS. KATZ: I'd be happy to call the warden.

THE COURT: It's a chance to get more experience. Call the warden of the prison.

MS. KATZ: I would ask for the record that the other three defendants express on the record their desire, if the warden concurs.

MR. ROSENKRANZ: Mr. Smith prefers to remain in the M.C.C.

MR. MURPHY: As does Mr. Mauro.

MR. COOPER: Mr. Marino joins in that request.

THE COURT: I can well understand; it's a lovely spot. People are breaking in instead of breaking out.

• • •

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

—against—

JOHN MAURO,

Defendant.

United States Courthouse  
Brooklyn, New York

March 17, 1976  
10:00 o'clock A.M.

Before:

HON. JOHN R. BARTELS, U.S.D.J.

HENRI LE GENDRE  
Acting Official Court Reporter

[2] APPEARANCES:

DAVID G. TRAGER, ESQ.,  
United States Attorney  
for Eastern District of New York

BY: M. KATZ

KEVIN ROSS, ESQ.,  
Attorney for Defendant

[3] THE CLERK: Criminal Cause for Trial, United States of America vs. John Mauro.

MR. ROSS: I'm appearing for Mr. Mauro.

THE COURT: Are you a member of the Bar?

MR. ROSS: In this Court I've not been admitted.

THE COURT: You can't appear to try a case. You could appear here this morning, of course, but I would suggest you become a member.

Now, what were you going to say?

MS. KATZ: I was just going to say that you had indicated to myself and I indicated to Mr. Murphy that you would not be able to try this case this morning.



THE COURT: No point, he didn't have to come for this purpose.

MS. KATZ: I understand.

THE COURT: I'm trying this case, the jury is here now.

MS. KATZ: Did you want to adjourn it? There is a problem with six months rule. I don't believe Mr. Mauro—

THE COURT: He won't suffer too much.

MS. KATZ: He's incarcerated not in this case, but the speedy trial act would run as of [4] May 3rd and I don't believe there was ever any discussion with the defendant about the possibility of it not being tried in the six months.

THE COURT: You are right. I can only say this is only going to take a day; isn't it?

MR. ROSS: Could I point out for the record that a detainer has been lodged against the defendant since June of last year. There might be some sort of a speedy trial problem.

MS. KATZ: I think we have already disposed of the issue when the six months begins to run and it had begun to run at the point of indictment in this case under 18USC41—

THE COURT: Any question about speedy trial you better either tell me whether you're going to waive it or not. I'm certainly not going to let this case slide off on any technicality.

MR. ROSS: It's my understanding that this adjournment was by consent and would be excluded under the detainer agreement.

THE COURT: Was it by consent?

MS. KATZ: I believe that this was the date that was mutually agreeable.

THE COURT: When can we try this case?

LAW CLERK: April 26th.

[5] THE COURT: You find out whether there will be any speedy trial question raised here before April 26th. If it is, I will bring him in.

MR. ROSS: If I may be heard.

THE COURT: It's only one day, and I have these other matter pending.

MR. ROSS: There will be a question raised under the detainer agreement.

THE COURT: Speedy trial because you say it begins on—

MR. ROSS: He was returned to his original place in Auburn, New York and detained there.

THE COURT: There is no determination in this case at all. I don't know what you are talking about.

MR. ROSS: If a defendant is returned to his original place of incarceration before final disposition where he's produced on detainer, the indictment must be dismissed and the defendant will make a motion.

THE COURT: You better make your motion right away.

MR. ROSS: I have the papers today but they haven't been endorsed.

. . .

[6] THE COURT: I want to know whether there is any speedy trial issue before that that's going to be raised. We'll try the case if we have to stay at night, immediately.

MS. KATZ: I would then suggest, if they are going to raise any speedy trial issue, I would have [7] Mr. Mauro brought down. He should be present during that. I don't believe that counsel can necessarily waive it on his behalf, although I imagine it might be possible.

THE COURT: You find out whether there is any speedy trial issue involved.

MS. KATZ: It's the Government's position that there is no speedy trial issue. If Mr. Ross and Mr. Mauro want to raise it then I would suggest that they raise it.

THE COURT: They can waive it without bringing him down, providing they call him up.

MS. KATZ: If they have discussions with him and they certify that they have explained his rights.

THE COURT: He certainly is not being subjected, it seems to me, to any hardship, but that's not what the rule says.

MR. ROSS: The real prejudice I believe, that the defendant is being subject to is while he's being incarcerated, that the detainer has been lodged against him.

THE COURT: That's another matter. You make a motion on that, but that doesn't have anything to do with the speedy trial, does it?

[8] MR. ROSS: No, Judge, but the detainer agreement says a trial must be had within a certain month after production.

THE COURT: That's the basis of your motion.

MR. ROSS: I don't see any question there. He was produced November 12th.

THE COURT: And the trial was to be in four months after

production. You have four, five others in the same category.

MR. KATZ: I would hesitate to comment about the defendant's motion since I'm not clear exactly on the basis which they are making it, but I would suggest the fact that Mr. Mauro was produced and at that time the trial date of March 17th was set with both Mr. Mauro present and counsel; at that time there was no objection to that date. Specifically, Mr. Mauro to be returned to the State, for whatever reason, as he did not want to be held in Federal Correctional Facility, so I think any objection he might have whether it be legally or not, it was waived when he himself was present at the March 17th setting of the date.

THE COURT: Maybe he can't waive it, I don't know.

MR. ROSS: My understanding of the law is [9] that he cannot waive it.

THE COURT: You find out whether this delay from March 17th to April 26th is going to prejudice either side one way or the other. I'll make it a point to have the trial before that, much sooner.

. . .

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

—against—

John Mauro,

Defendant.

75-CR-816

United States Courthouse  
Brooklyn, New York

April 26, 1976

Before:

HONORABLE JOHN R. BARTELS, U.S.D.J.

HARRY RAPAPORT  
ACTING OFFICIAL COURT REPORTER

[2] Appearances:

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: MARSHA KATZ, ESQ.  
Assistant U.S. Attorney

ROBERT SADAWSKI, ESQ.  
Attorney for the Defendant

[3] THE COURT: All right, I will listen to the argument.

MR. SADAWSKI: Your Honor, its the position of the defendant on this application—

THE COURT: You will have to talk louder.

MR. SADAWSKI: It is the position of the defendant on this application to dismiss the pending indictment for criminal intent for two reasons:

One, that we have an existing agreement, the Interstate agreement on detainers, and we believe that agreement, which is binding on the State of New York and the Federal Government, has been violated and that the failure of the



Government to comply with that agreement is ground for and makes the indictment susceptible to being dismissed.

• • •

THE COURT: • • •

[5] However, I am considerably bothered of the fact that this defendant was returned without being tried as required by the Interstate agreement on detainers.

One thing that does stick out, however, is that he asked to be returned. He didn't want to stay at the Metropolitan Correctional Center. Is that right?

MR. SADAWSKI: Your Honor, to that end I have just had a discussion with the defendant to straighten out my own beliefs what happened on that date and he had asked me to relate to the Court that he will testify on that matter, that he did not request to go. And quite to the contrary, not for any legal reasons, for altruistic reasons, but for his own reasons. His grandmother was sick, the holidays were approaching and the visitation was ten times more liberal in the Federal detention here, that he preferred to be here. And the Government shipped him away. He had made [6] application to go to a hospital and a funeral subsequent to that based on the sickness of his grandmother, which became part of the reason he wanted to stay here in the first place, I'm not saying for a legal reason but it turned out because of circumstances, a quirk of circumstances, that he wanted to stay here.

MS. KATZ: My recollection was the same as the Court's. I have attempted to get a copy of the transcript of those proceedings and have not been successful to that end.

I think in terms of the issues the Interstate Agreement on Detainers, I believe on Mr. Mauro's counsel missed one important point. I realize there is a Third Circuit case contrary to the Government's position, nevertheless I believe he was not produced pursuant to this agreement. And it is not an automatic thing.

THE COURT: Your argument is that he is entitled to a writ?

MS. KATZ: Yes. This is a significant argument, I believe.

THE COURT: Then, of course, that would make the Interstate Agreement on Detainers meaningless.

MS. KATZ: No, your Honor. I don't believe that's the case.

[7] For example, if a state wishes to get a prisoner from the Federal Government they may issue a writ and the Bureau of Prisons may out of accommodation honor it. And the state has no power in which to enforce that writ. They may say, "I'm sorry, we will not turn him over."

THE COURT: You mean to say if the Federal Government issued a writ and the state would not observe that writ?

MS. KATZ: No, your Honor. If the State Court—

THE COURT: This is not a State Court proposition. This is a Federal Court.

MS. KATZ: Yes, your Honor. But I believe that was the purpose of the Interstate Agreement, to give a procedure by which a state may get a prisoner from the Federal Courts.

THE COURT: Nothing in the legislative history indicates anything of that at all.

MS. KATZ: I think the legislative history is very skimpy in this case.

THE COURT: It is skimpy.

MS. KATZ: It is unfortunate the full purpose of this act was never fully discussed. But I think the legislative history is not totally void of any discussion on this point.

[8] The statements made by the Attorney General and the Bureau of Prisons speak for the fact that there are many Federal prisons for which there are State detainers lodged against them. They also speak about the fact that there is no way for the State to get these prisoners.

THE COURT: You're arguing for the State. I don't believe you have any—you are a United States Attorney. You may argue for the Government. You are not in a position to complain because the State will have to obey the writ issued by the Federal Government.

MS. KATZ: I admit the fact that if a Federal District Court Judge orders a state officer to do an act, that that officer will have to comply. Nonetheless, that's not the issue before the Court.

The issue before the Court is the Interstate position on detainers. It's the Government's position that this, not by the issuing of a writ automatically invoking the procedures of this act, that that was not the purpose and that is not what was meant. That unlike the State, the Federal Government did have a procedure by which it can get the custody of

the prisoner. Nonetheless, it entered into it to give the State a corresponding right it did not have.

And now to say every time we use the inherent [9] power of the Court to request the presence of an individual we are automatically invoking an agreement, not known at the time that the writ was signed by the Court or by myself.

THE COURT: What do you mean by that? I wasn't supposed to know? I wasn't trying the case, you're trying the case?

MS. KATZ: I am aware, your Honor, of the fact that the Government is supposed to have knowledge of all statutes, acts and various criminal law involving any case that it comes before. Nonetheless, it was not the intention of the Government, nor I believe the intention of the Court, at the time the writ was executed.

THE COURT: It was certainly not the intention of the Court to do so under the agreement and you have a case in the Third Circuit facing it. This may be a case where Congress may be importuned to make changes of the act. But I don't know how the Court can escape imposing it.

MS. KATZ: Judge, I don't think Congress meant the result that—

THE COURT: You have two problems here. First is the fact that you returned the prisoner. And the second is that maybe if you didn't return him, have [10] you tried him in the 120 days.

MS. KATZ: At the time you offered various dates to the defendant.

THE COURT: Yes, March 17th was one.

MS. KATZ: Yes. And there were two earlier dates and Mr. Murphy indicated the fact that he was unavailable.

THE COURT: Maybe you can exclude the time and that would bring us up to Wednesday.

MS. KATZ: Your Honor, I was prepared to try it on the 17th of March and I am prepared to try it today also.

MR. SADAWSKI: May I be heard briefly, your Honor?

THE COURT: Yes.

MR. SADAWSKI: The method of invoking the Interstate Agreement, whether by a writ or by some form pursuant to the statute does not change the ramifications of whence the Federal Government has custody.

Miss Katz has raised a point not relevant here. We are

not so much concerned of how you got them. The statute doesn't say if you use a writ ad testificandum it's okay. One says on those exceptions, you have a charge and indictment, he has been arraigned on the [11] indictment and you must try him before you send him back. It doesn't raise the situation of how he got to your custody, but—

THE COURT: Mrs. Katz, I understand your position and I don't necessarily understand the Congressional posture. They say you have interrupted the rehabilitative procedures of Mr. John Mauro and he would have been much further rehabilitated were it not for the fact that you sent him back. You can see that by looking at him.

[12] MR. SADAWSKI: We have some documentary proof in that area.

THE COURT: I bet.

MR. SADAWSKI: We have denials of drug transfer programs and—

THE COURT: Mrs. Katz, you just have to sometimes face up to some of the bizarre and queer statutes that we are faced with. It is a sad situation because I don't think they think too deeply down there, but nevertheless here is the statute.

I have to rule that under the Interstate Agreement on detainers and when the Government requests the presence of a defendant for the purpose of trial, the Government must, one, try the defendant within 120 days of his arrival in federal custody as extended by the Court with the consent of the defendant; and, two, try him before returning him to State custody. That's Article 4-C and E of the agreement.

And accordingly, regretfully and reluctantly the indictment must be and is hereby dismissed.

An opinion will follow. See *United States ex rel Esola v. Groomes*, 520 Fed. 2d 830, Third Circuit, 1975 and *United States v. Ricketson*, 498 F. 2d, 367, Seventh Circuit, 1974.

• • •

[14] MR. SADAWSKI: The reason for my question, I think the Court should be advised is that the same detainer that was issued to bring him down for testimony before the original Grand Jury is the same detainer that they brought him



down for this appearance. It has never been changed, updated or court-approved since July of last year.

Is that writ still in effect?

THE COURT: No. I suppose that wouldn't be.

MR. SADAWSKI: It is a good question.

MS. KATZ: I would object. I think there is some misunderstanding here.

What happened to Mr. Mauro concerning the civil contempt and whether there is a bail of detainer still lodged pursuant to the Court Order in that case and the production of him in that case is a separate and [15] distinct issue to anything that has to do with the criminal contempt.

He was brought for the purposes of arraignment on an indictment via a writ ad prosequendum to this court, I believe, sometime in November. I don't remember the exact date. That is the writ he is being brought down here on. All of the other writs have to do with the civil contempt and are not before this proceeding.

Now, if counsel wants to make a motion to dismiss the detainer on whatever grounds he wants, as to the civil contempt, that's a separate and distinct proceeding.

THE COURT: Yes. This is an indictment under criminal contempt and the problem before the Court is can he be tried under that indictment inasmuch as a detainer which was lodged in the State Prison was now—was such that he wasn't tried within the proper time and he was returned.

And I say that means that this indictment must be dismissed. There is nothing else before the Court except a dismissal of the indictment.

MR. SADAWSKI: Yes. But I think as a collateral matter to that dismissal all other administrative items which are proving detrimental to the defendant [16] should be removed.

THE COURT: Wait a minute, wait a minute.

The detainer was filed for this indictment, was it?

MS. KATZ: No.

MR. SADAWSKI: No, your Honor.

THE COURT: Well, then nothing else is before me.

MR. SADAWSKI: May I ask from the U.S. Attorney why such a detainer still remains?

MS. KATZ: If Mr. Sadawski would like to make a motion concerning the civil contempt and the validity of the de-

tainer still outstanding, the Government would be happy to reply to that motion. And that motion has not been made now or in the past. The motion was made as to the criminal contempt and that's separate. . . .

. . . .

[17] THE COURT: . . . The civil contempt I thought was more or less satisfied. Wasn't that over with? I mean, Judge Costantino put him in jail stating he could satisfy the contempt if he testified, right? And he never testified, is that right?

MS. KATZ: Yes.

THE COURT: Isn't that all over with now?

MR. SADAWSKI: The query, is that Grand Jury still alive?

MS. KATZ: The Grand Jury is still alive.

THE COURT: The Grand Jury is still alive. . . .

. . . .

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

—against—

JOHN FUSCO,

Defendant.

75 CR 819

United States Courthouse  
Brooklyn, New York

April 29, 1976  
10:00 a.m.

Before:

HONORABLE JOHN R. BARTELS, U.S.D.J.

I hereby certify that the foregoing is  
a true and accurate transcript from  
my stenographic notes in this pro-  
ceeding.

/s/ Perry Auerbach  
Official Court Reporter  
U.S. District Court

PERRY AUERBACH  
ACTING OFFICIAL COURT REPORTER

[2] Appearances:

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: MARSHA KATZ, ESQ.  
Assistant United States Attorney

JOHN CORBETT, ESQ.  
Attorney for Defendant

[3] (Discussion off the record.)

MISS KATZ: We are discussing the motion made by John Mauro through his attorney concerning interstate agreement on detainers act. Mr. Fusco was brought out of—I believe it is Clinton State Prison on November 5, 1975, for the purposes of arraignment. He was returned to that prison on December 18, 1975, and then he was, pursuant to a writ of ad prosequendum brought to this court. He left Clinton on April 28, 1976, and is at present in the courtroom today.

THE COURT: Wait a minute. He was sent back on December 17th, right?

MISS KATZ: 18th, your Honor.

THE COURT: Then he was brought down here?

MISS KATZ: April 28, 1976.

THE COURT: Yes. You see, there are two phases of the statute that are involved. I think to bring him down on November 5th, you can't return him according to my interpretation of the statute without trying him.

MISS KATZ: Your Honor, as to the question of the 120 days, at the time Mr. Fusco was in the courtroom, I believe that the original trial date for this was February 4th.

[4] MR. CORBETT: That is right.

MISS KATZ: The Government at the time stated that they were ready to try the case at the time of the arraignment. Your Honor set it down for February 4th. Quite honestly, it was adjourned, I believe, by your Honor to this date.

MR. CORBETT: That is right.

THE COURT: After—didn't I ask them if they waived speedy trial?

MISS KATZ: Your Honor, I am sorry. I don't have any notation about that.

MR. CORBETT: I have no notation of that. My notation was this was on December 2nd. We appeared before your Honor and a trial date was set for February 4th.

THE COURT: However, he was sent back.

MR. CORBETT: He was sent back to Clinton Prison at Dannemora at that time.

THE COURT: Well—

MISS KATZ: I don't believe there is any issue on the 120 days. It is true that he was sent back prior to the completion of all the criminal proceedings in this case.



THE COURT: Well, I have to know the exact time of the writ. I guess the files will show that on [5] November 5 he was really down here.

MISS KATZ: Yes, your Honor. I believe it is the same writ that was used for Mr. Mauro. It is a writ of ad prosequendum.

Now, he was brought forth on other dates, but that was pursuant to the civil contempt, and his testimony before the Grand Jury, which has nothing to do with this case.

THE COURT: And he was returned on December the 18th.

MISS KATZ: Yes.

THE COURT: Without being tried.

MISS KATZ: Yes, your Honor.

THE COURT: And the case was set down for April 28th.

MISS KATZ: Your Honor, originally it was set down for February 4th.

THE COURT: Well, in February 4th, that was just about 90 days, approximately; wasn't it?

MISS KATZ: I believe it is approximately that.

THE COURT: February 4th, assuming he wasn't returned, I mean you still have to try within 120 days.

MISS KATZ: Your Honor, I believe that the delay was because of your own calendar and your own schedule.

[6] THE COURT: It was delayed because on February the 4th I went into the hospital.

MISS KATZ: Yes, your Honor. I don't believe that is a delay that can be attributed to the Government. We were certainly ready to proceed immediately and try the case on February 4th.

THE COURT: I went to the hospital that day or February 3rd, and then it was put down for April.

MR. CORBETT: Yes, sir. For today.

THE COURT: So, as far as the 120 days is concerned, this case differs from the case of Mauro; doesn't it?

MISS KATZ: Well, your Honor, it is our position that in Mauro, he consented to the trial date because of commitments.

THE COURT: He denied that, as you know, right in your presence.

MISS KATZ: I think it was denied, his consent to be returned to the prison. I don't think he denied to be returned on that date. I think he consented.

THE COURT: That is within 120 days.

MISS KATZ: Your Honor, I am not really sure. But he was offered two alternative days, and this was the choice made by him and his attorney. He was offered both the 4th and the 9th, which he rejected. [7] So, I believe that that was not a delay attributable to the Government, and that we were prepared to try him within the 120 days.

THE COURT: I think that—

THE CLERK: I believe you offered him either February 4th or 8th.

THE COURT: Who is "he"?

THE CLERK: The attorney for Mr. Mauro.

THE COURT: It was the attorney for Mr. Mauro.

MISS KATZ: But Mr. Mauro was present in the courtroom and consulted with him.

THE COURT: Yes. Now he is bound by that.

MISS KATZ: I don't believe that the delay is attributable to the Government.

THE COURT: And you say that in this case that the delay is not attributable to the Government?

MISS KATZ: No, your Honor. You pointed out that you were hospitalized. It certainly can't be attributable to the Government.

THE COURT: Anyway, you returned him.

MISS KATZ: Yes. The facts are he was produced on November 5, 1975, for the purposes of arraignment, and he was returned prior to trial.

THE COURT: Yes. Well, there wasn't any trial. He returned December 18th. Now, I assume you move for [8] a dismissal in the Interstate Detainer Act; is that right?

MR. CORBETT: I so move.

THE COURT: I don't know why this case is any different from Mauro.

MISS KATZ: Your Honor, I did not say there was any difference.

THE COURT: So I have no alternative; do I?

MISS KATZ: Well, your Honor, you have. If your Honor would like me to reargue the issues of law that I did in the case of the United States vs. Mauro, I would be happy to do so.

THE COURT: All you have to do is give me the same brief.

MISS KATZ: Yes. The factual pattern is similar to Mr.

Mauro's situation. I would resubmit my memorandum of law in this case, as I did in Mr. Mauro's case, and make the same oral argument, some of which was made in the Third Circuit case and was rejected. One of these was, it was not a real detainer, it was a writ, and that is the reason it did not fall in the Detainer Act.

The second fact is the Act requires in Part 3, a formal acknowledgement of invoking rights under the Interstate Agreement Act. I would argue that in Part 4, [9] it also requires a formal act of-actually stated that we were invoking our rights under the Interstate Act.

THE COURT: What you say, that unless the defendant at the time—

MISS KATZ: Your Honor, in Part 3, the defendant must specifically invoke the act, and I would argue that in order to bring Part 4 into play, the Government must specifically invoke the Act, which was not done in this case.

THE COURT: You mean in order to bring in Part 4, the Government must demand a trial, that he didn't do it?

MISS KATZ: Your Honor, in order to bring in Part 4, we must demand that his production under Part 4 of the Interstate Agreement Act, which wasn't done.

THE COURT: Neither made any demand.

MISS KATZ: Yes, your Honor, but I believe in Part 3, in order for a defendant to invoke his right into Part 3, you must specifically invoke the Act by so stating in writing that he is moving for a completion of a detainer or matters concerning a detainer under the Interstate Agreement Act, Part 3.

I would suggest to this Court that the Government must do the same thing that in order to have an individual produced pursuant to the Interstate Agreement [10] Act, we must state in writing that we demand the prisoner pursuant to Part 4 of the Interstate Agreement Act, and if we do not do so, then we are not bound by the other provisions of the Act.

THE COURT: Because you circumvent the other Act completely; wouldn't you? All you have to do, you pay no attention to a detainer.

MISS KATZ: I believe the Government need not invoke the Act. That is not, no. Say that other jurisdictions might not need the—

THE COURT: You made that argument.

MISS KATZ: Yes, your Honor. I believe I have.

THE COURT: Then you also say that if the defendant wants to take advantage of it, he has to.

MISS KATZ: Right.

THE COURT: Right.

MISS KATZ: Yes, your Honor.

THE COURT: He has to do it in writing.

MISS KATZ: Yes, sir. And I also suggest that a defendant can waive his rights by requesting that he be returned to—whether it be the State Prison or from a State or a Federal Prison, from whence he came.

THE COURT: You never had that here.

MISS KATZ: Well, your Honor, until we get a [11] copy of the proceedings, we don't know exactly who agreed and who did not agree to be returned.

THE COURT: I don't think you have that in the proceedings. He was returned. I don't think he put down on the record one way or the other whether he was requesting it or you were.

MISS KATZ: Your Honor, I believe Mr. Fusco did request to be returned to Clinton. That he did not want to stay here. But, this is my recollection.

MR. CORBETT: I don't recall that being on the record.

THE COURT: Well, you better find out, Miss Katz. You find out.

MISS KATZ: Your Honor, Mr. Corbett was in the courtroom. Do you recall it being on the record or not, that Mr. Fusco requested that he be returned?

MR. CORBETT: I know he spoke to me, not in the courtroom, and said he was unhappy with the MCC, and would like to go to Dannemora, but he never stated on the record, as I recall, Miss Katz.

MISS KATZ: Your Honor, he did make a representation, whether it was on the record or not.

THE COURT: Of course, when you waive a right, you must do so knowing as to what you are waiving. And I assume, Mr. Corbett, that you didn't tell him [12] that he had a right to be tried here?

MR. CORBETT: No, I did not.

THE COURT: (Continuing) In 120 days, and that if he didn't request or waive that right, the Government could



not return him without a trial, and if the Government did return him, under the circumstances, they could no longer try him.

MR. CORBETT: Yes, sir.

THE COURT: Fortunately, Miss Katz, the defense here is one that is not too serious. But, you could have a hijacking case or a bank robbery, and then to let the fellow off—

MISS KATZ: Well, your Honor—

THE COURT: You see, that would be terrible; wouldn't it?

MISS KATZ: I would suggest that there are probably many cases in this jurisdiction, as well as other jurisdictions, where this procedure has been followed. It is not an unusual procedure for an individual to be produced for the purposes of an arraignment and then returned until such time as trial. So, I—although, and I certainly am not sure I agree with you that this is not a serious offense. I believe this is not. It is unlucky that this is the only case where the fact will be involved in.

. . .

[13] THE COURT: All right. Mr. Fusco, you are going to be very lucky. Due to a statute that was passed in 1970, the Government could not return you after your original place of incarceration, without automatically requiring the Court to dismiss the indictment against you. The Government did return you on December 18th and automatically I have to dismiss the indictment. So, I am dismissing the indictment.

MR. FUSCO: Your Honor, may I say something?

THE COURT: Yes.

MR. FUSCO: You stated that you felt I was lucky. Well, I was just at a parole hearing and I was given the maximum I could get at the parole hearing, due to the circumstances that I had an unfavorable report from the DA's office. Now, I really feel that because of all of this that I went through was due to this unfavorable report, because he is in total contrast with what he had stated at my sentencing.

MR. CORBETT: This was the District Attorney in [14] Queens County.

MR. FUSCO: But now the penalty has already been served twice to me; civil contempt by a parole board, and I lost my job. Then I was denied programs. I have been far from

lucky on all these circumstances. I am serving a life sentence, your Honor.

THE COURT: You brought in a lot of cocaine.

MR. FUSCO: I know, sir. I was charged with an attempted possession. An attempt.

THE COURT: Did you have a record?

MR. FUSCO: No, sir. I was never incarcerated in my life. Three years in the Service. I am married. I worked till the day I was incarcerated.

THE COURT: It was the District Attorney in Queens' report?

MR. FUSCO: Yes, sir. I feel this had plenty to do with it.

THE COURT: Wait a minute. Wait a minute. Don't talk so fast without knowing what you are talking about. I am asking you to listen for a minute.

MISS KATZ, you don't have to do with any report?

MISS KATZ: Your Honor, I believe that a notification was made to the District Attorney's Office concerning the fact that he was put before the Grand Jury and granted immunity and he refused to testify. [15] I don't think there is little question about the factual situation, and the dismissal in this situation has nothing to do with that situation.

THE COURT: None whatsoever. You are lucky; still lucky, because if you were tried, you refused to answer, and if this indictment stood up and you were found guilty, I was going to add to your sentence. Now, keep that in mind and see how lucky you are. You can't come here and thumb your nose at justice and do the things you have done and then tell everyone how unlucky you are. You are lucky because the indictment was dismissed.

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SUPREME COURT OF THE UNITED STATES

No. 76-1596

UNITED STATES, *Petitioner*,

v.

JOHN MAURO AND JOHN FUSCO

ORDER ALLOWING CERTIORARI. Filed October 3, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second ——— Circuit is granted. The case is set for argument in tandem with No. 77-52.